



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 13, 1998

The Honorable Carlos F. Truan  
Chair, International Relations,  
Trade & Technology  
Texas State Senate  
P.O. Box 12068  
Austin, Texas 78711-2068

Letter Opinion No. 98-109

Re: Whether a former district judge sitting by assignment may hold a compensated teaching position with a state university (RQ-1187)

Dear Senator Truan:

You have requested our opinion as to whether a former district judge sitting by assignment may hold a compensated teaching position with a state university. We conclude that neither article XVI, section 40 of the Texas Constitution nor the common-law doctrine of incompatibility prohibit the dual service.

Article XVI, section 40 prohibits an individual from holding, "at the same time, more than one civil office of emolument." While "a former district judge available for assignment" holds a public office for purposes of article XVI, section 40,<sup>1</sup> a professor at a state-supported university does not. *Tilley v. Rogers*, 405 S.W.2d 220, 224 (Tex. Civ. App.--Beaumont 1966, writ ref'd n.r.e.). The situation about which you ask thus does not involve the simultaneous holding of two civil offices of emolument and, accordingly, article XVI, section 40 does not apply.<sup>2</sup> Neither does the proviso to article XVI, section 40, bar the receipt of compensation for both positions.<sup>3</sup>

In addition, the common-law doctrine of incompatibility poses no impediment to a former district judge who sits by assignment from simultaneously holding a compensated teaching position

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<sup>1</sup>See Letter Opinion No. 96-145 (1996) at 2-3.

<sup>2</sup>See Letter Opinion No. 93-96 (1993) at 1 (quoting Letter Opinion No. 90-39 (1990) at 1).

<sup>3</sup>The proviso states: "State employees or other individuals who receive all or part of their compensation either directly or indirectly from funds of the State of Texas and who are not State officers, shall not be barred from serving as members of the governing bodies of school districts, cities, towns, or other local governmental districts; provided, however, that such State employees or other individuals shall receive no salary for serving as members of such governing bodies." Neither position about which you inquire is that of a member of a "governing body" of a "local government district"; this portion of article XVI, section 40 is therefore inapplicable. See Letter Opinion Nos. 93-96 (1993), 90-39 (1990).

with a state university. Neither position is subordinate to the other, and we cannot imagine how any issue of "conflicting loyalties" might arise.<sup>4</sup>

**S U M M A R Y**

Neither article XVI, section 40 of the Texas Constitution nor the common-law doctrine of incompatibility prohibits a former district judge sitting by assignment from simultaneously holding a compensated teaching position with a state university.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Sarah J. Shirley".

Sarah J. Shirley  
Chair, Opinion Committee

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<sup>4</sup>See Letter Opinion No. 93-96 (1993) at 2.